**Before the**
**FEDERAL COMMUNICATIONS COMMISSION**
**Washington, D.C.**

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| In the Matter of | ) | |
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| Informal Request of ITA for Certification | ) | |
| To Coordinate the Power Radio Service, | ) | RM - 10687 |
| Railroad Radio Service, | ) | |
| And Automobile Emergency Radio Service | ) | |
| Under Part 90 of the Commission's Rules | ) | |

# OPPOSITION TO THE ITA INFORMAL REQUEST


**AMERICAN AUTOMOBILE ASSOCIATION**

**ASSOCIATION OF AMERICAN RAILROADS**

**UNITED TELECOMMUNICATIONS COUNCIL**

**AMERICAN PETROLEUM INSTITUTE**


April 25, 2003

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## OPPOSITION TO THE ITA INFORMAL REQUEST

The American Automobile Association ("AAA"), the Association of American Railroads ("AAR"), the United Telecommunications Council ("UTC"), and the American Petroleum Institute ("API") (collectively "the Opponents"), by their attorneys and pursuant to Section 1.45(b) of the Commission's rules, 1/ hereby submit their joint opposition to the above-captioned Informal Request filed by the Industrial Telecommunications Association ("ITA"). 2/ The Informal Request is a procedurally defective vehicle that seeks to circumvent the Commission rules and

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1/ 47 C.F.R. § 1.45(b).

2/ Informal Request of the Industrial Telecommunications Association for Certification to Coordinate the Power Radio Service, Railroad Radio Service, and Auto Emergency Radio Service Under Part 90 of the Commission's Rules (filed Jan. 27, 2003) ("Informal Request"). The Consumer & Governmental Affairs Bureau classified the Informal Request as a petition for rulemaking and placed it on public notice on March 26, 2003. Consumer & Governmental Affairs Bureau Reference Information Center, Petition for Rulemaking Filed, *Public Notice*, Report No. 2601 (Mar. 26, 2003).

policies with respect to frequency coordination for auto emergency, railroad, and utility infrastructure radio services. Moreover, the Informal Request completely fails to justify overturning the Commission's rules and policies for coordination of these radio service channels, which were specifically designed to safeguard the special needs of our nation's critical quasi-public safety services. For the reasons set forth below, Opponents urge the Commission to dismiss or deny the Informal Request.

## I. BACKGROUND: THE OPPONENTS' ROLES AS EXCLUSIVE FREQUENCY COORDINATORS

As a result of the Commission's extensive Refarming proceeding, Opponents have been certified by the Commission as the exclusive frequency coordinators for the Private Land Mobile Radio ("PLMR") bands allocated to the eligible applicants in the emergency road service, railroad, utility, and petroleum industries. 3/ In fact, the Commission relied extensively upon the special needs of the Opponents' respective industries when it designated Opponents as the exclusive frequency coordinators for the Auto Emergency Radio Service ("AERS"), Railroad

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3/ *See* Replacement of Part 90 by Part 88 to Revise the Private Land Mobile Radio Services and Modify the Policies Governing Them and Examination of Exclusivity and Frequency Assignment Policies of the Private Land Mobile Services, *Second Report & Order*, 12 FCC Rcd 14307, 14316-17, 14329-30 (1997) ("*Second Report & Order*"); Replacement of Part 90 by Part 88 to Revise the Private Land Mobile Radio Services and Modify the Policies Governing Them and Examination of Exclusivity and Frequency Assignment Policies of the Private Land Mobile Services, *Second Memorandum Opinion & Order*, 14 FCC Rcd 8642, 8650-52 (1999) ("*Second Memorandum Opinion & Order*") (collectively, the "Refarming Orders").

Radio Service, Power Radio Service, and Petroleum Radio Service channels, as discussed below.

### A. American Automobile Association ("AAA")

The American Automobile Association ("AAA"), which observed its 100th anniversary in 2002, is a not-for-profit federation of 77 auto clubs with more than 46 million members in the United States and Canada. AAA's primary mission is to promote highway driver and vehicle safety, including the provision of emergency road services. AAA responds to over 30 million road service calls annually, more than 80,000 a day. Almost one-third of these calls involve an immediate threat to life or property, and AAA must respond on a time-critical basis. In addition to responding to emergency calls from its members, AAA works with state and local governments in providing traffic incident management and disaster relief, easing the burden on financially strapped state and local agencies.

AAA has been using two-way voice radios for mobile communications since the early 1940s. In the 1950s, the Commission established specific frequencies for auto clubs by creating the Automobile Emergency Radio Service ("AERS"). In fact, AAA coordinated road service providers' FCC radio station applications prior to the organized frequency advisory committees established by the Commission in 1986, and has served as the frequency advisory committee for the AERS frequencies. It is beyond challenge that AAA best understands the road service business and how the AERS frequency assignments can be used efficiently and effectively.

In fact, Congress has recognized AAA's role as a quasi-public safety provider due to its provision of emergency road services and the important public safety function it provides. 4/ The Commission has also formally recognized AAA as a quasi-public safety entity and appointed AAA as the exclusive frequency coordinator for the AERS channels. 5/ In light of this designation, AAA is able to continuously track the use of the AERS channels by auto emergency responders. Needless to say, this function is paramount to AAA's ability to stay in constant contact with its service vehicles around the country. In no uncertain terms, AAA's role as frequency coordinator for the AERS channels is vital to AAA's public safety function.

**B. Association of American Railroads ("AAR")**

The AAR is a voluntary non-profit membership organization whose freight members generate approximately 97% of the total operating revenues of all freight railroads in the U.S. In addition, Amtrak, the nation's principal intercity passenger railroad, is a member of AAR. AAR has been certified by the Commission as the frequency advisory coordinator for the land mobile frequencies used by the railroad industry for dispatcher-to-train links, onboard communications, train-to-

4/ 143 Cong. Rec. H6029, H6173 (July 29, 1997).

5/ *See Second Memorandum Opinion & Order*, 14 FCC Rcd at 8650-52.

train communications, advanced train control systems and other industry-specific uses of spectrum. 6/

Radio communications systems are a vital component of the nation's railroad operations, most of which are safety-related. Indeed, the importance of safety in the railroad industry is evident from the very nature of the day-to-day operations of the business, *i.e.*, the constant movement of people, heavy equipment and freight (including hazardous or toxic industrial materials such as liquefied petroleum gas, chlorine, and molten sulfur). The safe and efficient operation of today's passenger and freight rail transportation networks would be impossible without reliable and effective mobile radio communications. 7/

Although the nation's railroad business is conducted by a multiplicity of separate companies, large and small -- including large freight railroads, regional and local "short line" operators, and local rail transit authorities -- the radio frequency infrastructure is, for all practical purposes, a single complex nationwide

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6/ *See, e.g.,* Frequency Coordination in the Private Land Mobile Radio Services*, Report & Order*, 103 FCC 2d 1093, ¶ 94 (1986); *Second Report & Order*, 12 FCC Rcd at 14324, 14330; Waiver of the Commission's Rules to License Use of Six Conventional 900 MHz Frequency Pairs for Advanced Train Control System*, Order*, 3 FCC Rcd 427 (PRB 1988); Modification of AAR's Licenses for Use in Positive Train Control Systems, *Order,* 16 FCC Rcd 3078 (WTB 2001).

7/ The link between rail safety and radio is well established in federal legislation and regulation. For example, pursuant to the 1992 Rail Safety Enforcement Act, 49 U.S.C. § 20103(a), the Department of Transportation, acting through its Federal Railroad Administration, has adopted regulations governing the use of radio for safety-related purposes in the rail industry. *See*, *e.g.*, 49 C.F.R. § 220.9 requiring "communications redundancy" aboard locomotives, and 49 C.F.R. § 232.19 *et seq*., governing operation of radio-equipped one-way and two-way "end-of-train" devices.

interrelated system. This is due in large measure to the track and equipment sharing arrangements between and among the freight railroads, as well as the track sharing arrangements between the freight railroads and Amtrak. A locomotive originating a trip on the west coast of the U.S. may travel all the way to the east coast, traversing the property of various railroads along the way, and must be in radio contact with the appropriate rail dispatch centers and control centers of each host railroad for the entire trip. Nationwide interoperability of railroad radio equipment and corresponding centralized planning for frequency use are essential for the system to function properly. In this regard, it is vitally important that whoever performs the frequency coordination function be thoroughly grounded in and familiar with railroad operations.

In addition to serving as frequency coordinator for the rail industry, AAR also functions as overseer of the industry's interoperability (or "interchange") standards, including standards for locomotives, freight cars, car components, signaling equipment and, most importantly for present purposes, communications and electronics equipment. These two roles – frequency coordinator and overseer of interoperability standards – are vitally linked and inseparable. The importance of this interrelationship for railroad mobile radio usage cannot be overstated, and is perhaps best illustrated by reference to a recent example. For the past several years AAR, working with and through its members, has been engaged in discussions leading to the adoption of an industry-wide standard for the next generation of narrowband voice radio in the VHF band; those discussions have necessarily involved the corresponding adoption of an industry-wide channel plan

and ongoing work on an industry-wide migration plan. This type of activity could only have been carried out by an entity that was thoroughly familiar not only with the day-to-day operations of the railroad industry, but also with the unique frequency coordination issues raised by the industry's current and projected frequency usage.

### C. United Telecommunications Council ("UTC")

Since 1948, UTC has been the national representative on communications matters for the nation's electric, gas, and water utilities and natural gas pipelines. Approximately 1,000 such entities are members of UTC, ranging in size from large combination electric-gas-water utilities that serve millions of customers, to smaller, rural electric cooperatives and water districts that serve only a few thousand customers each. Together with the members of the Critical Infrastructure Communications Coalition ("CICC"), 8/ UTC represents the telecommunications and information technology interests of virtually every utility, pipeline and other critical infrastructure ("CI") entity in the country.

In spite of the differences among these many systems, there is an overriding similarity: CI systems have extensive telecommunications requirements. The expansive nature of their infrastructure, whether including transmission lines,

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8/ The CICC is composed of the following organizations: The American Gas Association, the American Petroleum Institute, the American Public Power Association, the American Water Works Association, the Association of American Railroads, the Edison Electric Institute, the Interstate Natural Gas Association of America, the National Association of Water Companies, the National Rural Electric Cooperative Association and UTC.

water pumps or electric substations, requires maintenance, remote control and monitoring, and repair. Such needs can be met effectively only through telecommunications -- and traditionally, the most critical component in a CI entity's telecommunications arsenal has been its wireless network. 9/

Telemetry services are the communications backbone for remote monitoring and control of critical infrastructure, and PLMR services are the network nerve-endings for voice dispatch and data applications for routine maintenance and emergency restoration. "Any failure in their ability to communicate by radio could have severe consequences on the public welfare." 10/ Therefore, network reliability and integrity must be maintained to the highest standards for the safety of the work crews and the public that relies on the services that they help deliver. 11/

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9/ In addition to needing access to wireless voice communications, CI entities have a separate requirement: control over the communications system, to ensure safety and reliability. This control also can be satisfied only through the use of private radio spectrum.

10/ *See* Implementation of Sections 309(j) and 337 of the Communications Act of 1934 as Amended; Promotion of Spectrum Efficient Technologies on Certain Part 90 Frequencies; Establishment of Public Service Radio Pool in the Private Mobile Frequencies Below 800 MHz; Petition for Rule Making of The American Mobile Telecommunications Association, *Report & Order and Further Notice of Proposed Rulemaking*, 15 FCC Rcd. 22709, 22746 at ¶76 (2001)("*BBA97 Report & Order*").

11/ For instance, powerline carrier (PLC) facilities provide an essential link to the devices that monitor and control the safe, reliable and widespread delivery of affordable electric services to the public at large. These mission-critical systems are designed to trip electric relays less than a second after a fault occurs on the electric grid in order to prevent widespread outages that could occur. Although basic in design, these systems have been used for decades and have helped to keep electric service affordable and reliable in urban and rural areas.

UTC, like the other Opponents, was among the original representative associations certified as frequency coordinators in 1986; however, UTC had been providing coordination for decades prior to its certification. UTC's understanding of CI telecommunications systems goes far beyond traditional land mobile voice systems, to incorporate fixed wireless -- point-to-point and point-to-multipoint, within a variety of FCC services and frequency allocations -- mobile data networks, and even non-spectrum-based elements such as optical fiber networks. As an example of the association's services to its members, UTC currently is the only certified frequency coordinator offering coordination of newly allocated telemetry bands at 217-220 MHz and 1427-1432 MHz. And pursuant to a Memorandum of Understanding with the National Telecommunications and Information Administration, UTC maintains a database of PLC frequencies and their use by utilities.

### D. American Petroleum Institute ("API")

API is a national trade association representing approximately 400 companies involved in all phases of the petroleum and natural gas industries, including the exploration, production, refining, marketing and transportation of petroleum, petroleum products and natural gas. In the petroleum and natural gas industries, mobile radio communications are used in support of all of the foregoing activities and, most importantly, are critical for responding to emergencies that could impact hundreds or even thousands of people. Further, numerous federal, state and local regulatory requirements dictate the use of reliable communications

facilities in these industries to ensure the safety of their operations. For these reasons, API sought throughout the Commission's Refarming proceeding to obtain a level of coordination protection for these communications systems that will ensure their continued reliability.

API's Petroleum Frequency Coordinating Committee ("PFCC") is the exclusive FCC-certified coordinator for the petroleum channels. Through a contractual arrangement, the PFCC has authorized ITA to execute the PFCC's coordination functions as a certified petroleum coordinator. API selected ITA to perform these functions due to its specific knowledge of petroleum industry operations gained from its many years of experience in coordinating applications by integrated petroleum companies for Special Industrial Radio Service systems, which are used for pipeline and storage tank maintenance, oil and gas well servicing and fuel delivery.

In the current "post-refarmed" environment of service pool consolidation and competitive frequency coordination, ITA (in consultation with API representatives) is responsible for evaluating whether to provide coordination concurrence with respect to applications for use of the formerly "exclusive" petroleum channels (the oil spill response and clean up channels) or, in some instances, applications for use of the channels that were formerly shared between the Petroleum and other radio services. 12/ Although the Informal Request does not seek to change the procedures for coordinating petroleum channels, API opposes the

Informal Request because API believes that its grant would undo and/or undermine the well-founded coordination concurrence procedures adopted by the Commission to preserve the integrity of critical infrastructure industry radio systems.

These descriptions crystallize the rationale behind the Commission's designation of Opponents as frequency coordinators for the AERS, Railroad Radio Service, Power Radio Service, and Petroleum Radio Service channels, and the important public safety considerations underlying its decision. The Commission has long recognized the special circumstances surrounding these channels and has properly afforded the Opponents with the care and responsibility for their coordination. Certainly, ITA cannot be allowed to circumvent the Commission's reasoned analysis with a casually styled "Informal Request" to coordinate the AERS, Railroad Radio Service, and Power Radio Service channels. As noted above, even API, which permits ITA to coordinate the Petroleum Radio Service channels pursuant to a contractual arrangement, opposes ITA's request in this instance. For the reasons stated below, the Commission must dismiss or deny the Informal Request.

## II. THE INFORMAL REQUEST IS PROCEDURALLY DEFECTIVE

Although styled as an "Informal Request," ITA's clear desire to bypass the strict and unconditional concurrence requirements found in Part 90 of the Commission's rules is best characterized as an "end run" effort to reverse long-

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12/ *See* 47 C.F.R. § 90.35(b)(2).

standing Commission rules and policy. It is totally inappropriate for ITA to request certification to coordinate the AERS, Railroad, and Power frequencies through the means of an Informal Request, which ITA claims can be handled by the Wireless Telecommunications Bureau (the "Bureau") on an *ad hoc* basis. 13/ In fact, the Informal Request presents new and novel questions of law and policy that cannot be resolved under Commission precedent and guidelines, and are thus outside the delegated authority of the Bureau. 14/

Moreover, were the Bureau to proceed by virtue of this Informal Request, it would violate the Commission's rules. The Informal Request, at a minimum, seeks a modification of Part 90 of the Commission's rules – and, a request to modify a rule must be addressed at the Commission level. 15/ ITA attempts to justify its request by stating that the eligible parties for the designated frequencies will not change, only the number of coordinators. Yet, this proposed competition between coordinators is expressly contrary to the current rules, and the Bureau is precluded from reversing this policy.

In an implicit acknowledgment of the insufficiency of its chosen vehicle, ITA requests, in a footnote, that the Commission treat the filing as a Petition for Rulemaking under Section 1.401 of its rules "[i]n the event the FCC

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13/ *See* Informal Request at 4-5. Indeed, ITA did not even serve AAA, AAR, or UTC with copies of its pleading.

14/ *See* 47 C.F.R. § 0.331(d).

15/ *See* 47 C.F.R. §§ 1.401, 1.407, 1.411.

believes a rulemaking proceeding is necessary." 16/ First, a mere footnote cannot correct the myriad procedural and substantive infirmities the Informal Request presents. Second, as noted previously, a petition for rulemaking would be properly subject to the strict procedural requirements associated with such a petition. 17/ For example, at a minimum, the Commission would release a "Public Notice" of the petition for rulemaking and thereby provide an opportunity for public comment well in advance of any Commission action. 18/ ITA cannot avoid the strictures of the Commission's rulemaking process by styling its filing as an Informal Request.

Finally, ITA's Informal Request does not explain why a new proceeding is necessary to review the Commission's established policy, nor does it seek broad relief on behalf of similarly situated parties. Instead, ITA appears to seek special relief from the Commission's rules for its own pecuniary benefit, without explaining why such relief is warranted. For example, nowhere in its Informal Request does ITA acknowledge that it is acting as the *sole* coordinator of the Petroleum Industry frequencies on behalf of the American Petroleum Institute, which, as discussed above, is the exclusive coordinator of the frequencies designated for the petroleum industry. Nor, interestingly, does ITA request that the petroleum industry frequencies also be opened for competition.

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16/ Informal Request at n.1.

17/ *See infra* at n.14.

18/ *See* 47 C.F.R. §§ 1.403, 1.405.

For these reasons, the Informal Request is a procedurally defective pleading that should be dismissed or denied.

## III. THE INFORMAL REQUEST FAILS TO JUSTIFY OVERTURNING WELL-ESTABLISHED RULES AND POLICY

If granted, the Informal Request would significantly alter the present rules, which were adopted by the full Commission after years of opportunity for public comment. As ITA knows, the Refarming Orders were issued after a thorough airing of the issues and careful, deliberate consideration by the Commission and all interested parties. The Informal Request fails to justify overturning the well-established rules and policies of the Refarming Orders.

In reaching its conclusions with respect to Refarming, the Commission specifically stated that, "using coordinators who are knowledgeable with such special communications needs is the best way to protect these operations… and outweighs any potential benefits that may be gained through a competitive frequency coordination process." 19/ This language evidences the Commission's two primary rationales: first, to designate coordinators with specific knowledge of the needs of the quasi-public safety services; and second, to disallow competition among frequency coordinators for the frequencies allocated to such services. Indeed, under the Commission's rules, a party that wishes to coordinate frequencies

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19/ *Second Report & Order*, 12 FCC Rcd at 14330.

allocated to the four quasi-public safety services must first seek the written consent of the designated coordinator. 20/

Despite the Commission's well-articulated and long-standing rationale, ITA, through its Informal Request, seeks to turn the Commission's policy on its head. By asking the Bureau to certify it as coordinator for the AERS, Railroad, and Power channels because it "possesses the technical experience to meet the Commission's requirements[,]" 21/ ITA has strategically chosen to ignore both of the Commission's primary rationales in the Refarming Orders. Specifically, ITA provides no justification or evidence that would support a finding that the channels at issue should be opened to competition, nor that ITA would be the best candidate to compete with the designated coordinators for these channels. The Informal Request presents no substantive evidence on either of these points, but instead baldly suggests that ITA is qualified to handle the task and thus the Commission should allow it to do so.

Moreover, ITA's suggestion that competition among coordinators for the AERS, Railroad, and Power channels is in the public interest because it will offer applicants "increased speed-of-service, decreased costs, and better service for the customer" 22/ is completely without support. First, ITA provides no evidence whatsoever of complaints or problems related to speed-of service, quality of service,

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20/ *See* 47 § C.F.R. 90.35 (b)(2)(ii).

21/ *See* Informal Request at 9.

22/ Informal Request at 11.

or costs under the current coordination system. 23/ Instead, ITA mistakenly attempts to use the public interest determinations of the Commission in separate, unrelated decisions in the 800 MHz and 900 MHz context. 24/ Yet ITA is well aware that the full Commission has already addressed and denied arguments touting the benefits of competition in the PLMR bands for the four specific industries with "quasi-public safety" components.

Simply stated, ITA has not made the necessary showing to justify a change in the PLMR frequency coordination rules and policy established through numerous proceedings, each of which was subject to the procedural guidelines meant to foster Commission decision-making on the basis of a full and accurate

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23/ The language at pages 10 and 11 of the Informal Request is generalized and self-serving, as well as contrary to Commission policy. As noted previously, despite its hyperbole about the benefits of competition, ITA does not advocate that the petroleum channels for which it is the exclusive coordinator on behalf of API also be opened to competition. Nor does ITA indicate interest in coordinating the Alarm channels. Perhaps this is because the Alarm channels do not generate much volume in terms of frequency coordination and the Commission's rules specify that the Alarm channels may only be used to provide alarm services. This, too, seems to belie ITA's interest in creating competition.

24/ *See* United Telecom Council Informal Request For Certification As A Frequency Coordinator in the PMLR 800 MHz and 900 MHz Bands, *Order*, 16 FCC Rcd 8436 (WTB 2001)("*800 & 900 MHz Order*"). ITA places undue and haphazard reliance on the Bureau's decision to certify coordinators in the 800 and 900 MHz bands that had been formerly certified to coordinate frequencies below 512 MHz. In the *800 & 900 MHz Order*, the Bureau simply extended the Commission's policy determination that frequency coordination competition is generally beneficial when such competition is limited to frequencies that are not integral to public safety. In reaching its decision, the Bureau did not go beyond existing Commission precedent because UTC's request did not present any new or novel questions of law or fact. Thus, the Bureau was able to proceed on an *ad hoc* basis. In stark contrast, the Informal Request very specifically asks the Bureau to go beyond the parameters that the Commission has previously allowed.

record. To the extent that ITA seeks reconsideration of the rules and policies developed in the Refarming proceeding, the period for filing petitions for reconsideration has long since closed. 25/ Even so, ITA presents no justification for revisiting the Commission's decisions in this area, nor any evidence of a change in circumstances since the Commission established the exclusive coordination system for the four designated public safety frequency coordinators.

Indeed, as demonstrated above, the Commission has already specifically considered and addressed the public interest concerns raised by ITA. The agency resoundingly concluded (and reaffirmed) that designating an exclusive frequency coordinator for industries with a special relationship to public safety ensures quality through increased reliability and reduced interference. In reaching its determination, the Commission very carefully balanced the importance of solid, reliable service for the quasi-public safety industries against the general benefits of competition. 26/ To the extent that ITA seeks reconsideration of this decision, the opportunity to do so has long since passed. 27/ Indeed, not even the Commission,

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25/ 47 U.S.C. § 402(a), (c); 47 C.F.R. § 1.429(d); *see also*, *e.g.*, Implementation of the AM Expanded Band Allotment Plan, *Memorandum Opinion & Order*, 13 FCC Rcd 21872, 21873-74, ¶ 6 (1998).

26/ *See Second Report & Order*, 12 FCC Rcd at 14315-18.

27/ *See* 47 C.F.R. § 1.106(f) (stating that petitions for reconsideration must be filed within 30 days).

let alone the Bureau, can make so fundamental a change to its rules as that informally requested by ITA. 28/

Finally, Opponents note that the public interest considerations and policies supporting the findings of the Commission in its Refarming decisions are even stronger today than when the original Orders were issued. Indeed, public safety concerns have risen to a new level of prominence following the terrorist attacks of September 11, 2001. The nation is reminded almost daily of the vulnerabilities surrounding its critical infrastructure, including the transportation and utility industries and the automobile emergency response services. 29/ The increased awareness surrounding the viability and reliability of the quasi-public safety services, including the AERS, Railroad and Power channels, are at the forefront of the nation's homeland security effort. 30/ Now, more than ever, the

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28/ 47 U.S.C. § 402(a), (c); 47 C.F.R. § 1.429(d); *see also, e.g.,* Implementation of the AM Expanded Band Allotment Plan, *Memorandum Opinion & Order*, 13 FCC Rcd 21872, 21873-74, ¶ 6 (1998).

29/ *See, e.g.,* National Telecommunications and Information Administration, Current and Future Spectrum Use by the Energy, Water, and Railroad Industries, NTIA Special Publication 01-49 (2002) (recognizing "the vital roles the railroad, water, and energy industries play in the Nation's critical infrastructure" and stating "[t]he events of September 11, 2001, have underlined the importance of these industries and the role that they play not only in our daily lives, but in times of disaster response and recovery"); Homeland Security: Communications Industry Considers Measures to Protect Nation's Communications Services Against Attack, *FCC News Release* (Dec. 6, 2002) (FCC Chairman Powell said, "[O]ur nation's communications network must be secure and protected to ensure that public safety, health, and law enforcement officials are able to respond and ensure the flow of information.").

30/ *See* Homeland Security Act of 2002, Pub. L. No. 107-296, 116 Stat. 2135 (2002). Section 213 of the statute establishes "a critical infrastructure protection

users of these pools need interference-free access to spectrum, as well as designated coordinators with specialized knowledge of their unique and vital communications needs.

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program" concerning use of national private sector networks in emergency response. Section 508 discusses the Secretary of Homeland Security's use of national private sector networks and infrastructure for emergency response to major disasters. For example, Opponent UTC notes that it has been deeply involved in Homeland Security efforts carried out by its member companies, and in educating agencies engaged in Homeland Security matters concerning the reliance of electrical, gas and water utilities and pipelines on telecommunications systems. UTC currently is engaged in industry efforts to meet the need for nationwide emergency interoperability, both among utilities responding to emergencies and including other responders. Connected with this effort is work by UTC's Next Generation Wireless Task Force to develop a model for wireless equipment manufacturers to meet utilities' integrated voice and data communications needs. As with AAA and railroads, UTC's work on many fronts is only possible because of its understanding of the day-to-day operations of utilities, their current problems and future needs.

## IV. CONCLUSION

For the reasons set forth above, the Informal Request is procedurally deficient, contrary to established Commission rules and policies, and unsupported by facts or law. Therefore, the Opponents urge the Commission to dismiss or deny the Informal Request.

Respectfully submitted,

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